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August 5, 2024

Via ECF

Hon. Dale E. Ho
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Defendant AFS shall file a letter, not to exceed two pages, in response by **August 6, 2024**. Defendant MFS may file a letter, not to exceed two pages, in response by **August 6, 2024**. The parties shall state their availability (and, in the case of MFS, the availability of their expert) for all business days through the close of expert discovery on August 12, 2024.


Dale E. Ho
U.S. District Judge

Dated: August 5, 2024
New York, New York

Re: *Lev-Ary v. Advanced Fertility Services, P.C., et al.*, No. 23 Civ. 5504

Your Honor,

On behalf of Plaintiff Larissa Lev-Ary, I write to respectfully request that the Court order Defendant Advanced Fertility Services, P.C. (AFS) to produce its expert witness, Grace Centola, on August 9 or 12, 2024. If Dr. Centola is not available on those dates, we ask that the Court extend the deadline to complete her deposition by August 19.

Knowing that the window to complete expert depositions was short in this case, I emailed opposing counsel on July 1, 2024, asking to “get dates on the calendar now for expert depositions so we don’t fall prey to August scheduling difficulties.” I disclosed Plaintiff’s intention to produce two expert reports, provided at least four dates that each expert was available to be deposed, and asked which dates Defendants’ counsel “would like to reserve.” I also asked counsel to provide Defendants’ experts’ availability for depositions as soon as they could, “so we can get those dates scheduled and held.”

Defendants did not respond. On July 8, I emailed again, writing:

You have not responded to me about holding dates for Plaintiff’s expert depositions, nor have you provided me dates that your expert is available. It is my understanding that only AFS is retaining an expert (though please correct me if I am wrong about that). Accordingly, I would like to hold **August 8 and 9** for Plaintiff to depose Defendants’ expert(s). If there is only one expert then I obviously will not need both dates.

Counsel for MFS responded that it would be retaining an expert and would provide their availability in a few days. Counsel for AFS responded, “Checking thx.” Neither ever confirmed their experts’ availability.

Immediately upon receiving Defendants’ expert reports, I sent counsel deposition subpoenas for August 8 (AFS) and 9 (MFS). On August 2, MFS’s attorney said that its expert was not available on August 9. I emailed all counsel that morning to ask whether

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Kaufman Lieb Lebowitz & Frick
Page 2 of 2

August 5, 2024

AFS's expert could be deposed on the 9th and MFS's expert on the 8th. Receiving no response, I emailed again that afternoon. MFS's attorney then responded that its expert was available on the 8th. I confirmed that date and sent a revised subpoena to that effect. I told counsel for AFS that, in addition to the 9th, I was also available on August 12. Counsel for AFS never responded.¹

Expert discovery is set to close August 12. Plaintiff is ready and able to depose AFS's expert on Friday the 9th or Monday the 12th. Because AFS's counsel will not confirm a date, I respectfully request that the Court order AFS to make its expert available for a deposition on August 9th or 12th or, if necessary, extend the expert discovery deadline for the limited purpose of scheduling Dr. Centola's deposition.

Respectfully submitted,

/s/ Alison Frick

Alison Frick

¹ Plaintiff disclosed her expert reports on July 25 and 26, 2024. No Defendant has expressed any interest in deposing those witnesses.